

Number: **200832003**  
Release Date: 8/8/2008  
Index Number: 2055.12-10

Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact: \_\_\_\_\_, ID No. \_\_\_\_\_

Telephone Number:

Refer Reply To:  
CC:PSI:04  
PLR-102958-08  
Date: APRIL 09, 2008

### Legend

Decedent	=
Brother	=
Sister	=
Date 1	=
Date 2	=
Date 3	=
Charity 1	=
Charity 2	=
Charity 3	=

\$A	=
\$B	=
<u>X</u>	=
Court	=

Age 1 =  
Age 2 =

Dear \_\_\_\_\_ :

This is in response to a letter from your authorized representative, dated January 15, 2008, requesting a ruling concerning the federal tax consequences of the proposed judicial reformation of Trust, under § 2055(e)(3) of the Internal Revenue Code.

Decedent died testate on Date 1. Brother was duly appointed executor of Decedent's estate by the Court.

Article SIXTH of Decedent's will provides that the residue of Decedent's estate is to be held in trust, Trust, for the benefit of Brother and Sister. The trustee of Trust is Brother. Article SEVENTH provides that the purpose of Trust is to provide income to Brother and Sister during their lifetimes should they survive Decedent. Accordingly, the first \$A of monthly trust income is to be paid to Sister during her lifetime. The balance of the trust income is to be paid to Brother during his lifetime. After the death of Brother and Sister, Trust shall terminate and the trustee is to distribute the remaining assets of Trust, including accumulated income not previously distributed, to Charity 1, Charity 2, and Charity 3, in equal shares. The will is silent regarding the disposition of Trust income in excess of \$A per month in the event Brother predeceases Sister. As of Date 1, Sister was Age 1 and Brother was Age 2.

Trust does not qualify for the estate tax charitable deduction under § 2055(a) because Trust is not a charitable remainder annuity trust (CRAT) or a charitable remainder unitrust (CRUT) within the meaning of § 664(d)(1) or (d)(2). In order to qualify Trust for the estate tax charitable deduction, on Date 2, which is within 90 days after the last date (including extensions) for filing the Decedent's estate tax return, Brother, as Executor of Decedent's estate and trustee of Trust, filed a petition in Court to reform the Trust under § 2055(e)(3) in order to qualify Trust as a charitable remainder unitrust described in § 664(d)(3).

On Date 3, pursuant to the Court order, Article SEVENTH of Decedent's will was reformed to create a charitable remainder unitrust (CRUT). Trust, as reformed, provides that the first day of the unitrust period is the date of Decedent's death, and the last day of the unitrust period is the date of death of the last to die of Brother and Sister. During the unitrust period, the trustee is to distribute annually the "Unitrust Amount" defined as an amount equal to the lesser of the trust income for the taxable year (as defined in § 643(b) of the Internal Revenue Code) and  $\underline{x}$  percent of the net fair market value of the trust valued annually on the first day of each taxable year. The Unitrust Amount is to be distributed as follows. The Trustee is to pay to Sister, annually, during her lifetime an amount equal to the lesser of the Unitrust Amount or the sum of \$B in monthly installments of \$A on the last day of each calendar month. The trustee is to pay to Brother, during his lifetime, the portion of the Unitrust Amount remaining after making or providing for the distribution to Sister. If Brother predeceases Sister, the portion of the Unitrust Amount that would otherwise be distributed to Brother, will be distributed in equal shares to Charity 1, Charity 2, and Charity 3. The unitrust amount for any year shall also include any amount of trust income for such year that is in excess

of the amount required to be distributed to the extent that the aggregate of the amounts paid in prior years was less than the amounts computed as x percent of the net fair market value of the trust assets on the valuation dates.

Upon expiration of the unitrust term (that is, on the death of the last to die of Brother and Sister), the trustee is to distribute all of the principal and accrued but undistributed income of Trust, free of trust to Charity 1, Charity 2, and Charity 3.

Your authorized representative has requested a ruling that the pending judicial reformation of Trust:

1. Is a qualified reformation for purposes of § 2055(e)(3);
2. Will cause the Trust created by the judicial reformation to qualify as a charitable remainder trust within the meaning of § 664 and the regulations thereunder; and
3. Will cause the present value of the charitable remainder interest in the reformed Trust to qualify for the Federal estate tax charitable deduction under § 2055(a).

Section 664(d)(2) provides, in relevant part, that a CRUT is a trust: (A) from which a fixed percentage (which is not less than 5 percent nor more than 50 percent of the initial net fair market value of all property placed in trust) is to be paid, not less frequently than annually, to one or more persons (at least one of which is not an organization described in § 170(c) and, in the case of individuals, only to an individual who is living at the time of the creation of the trust) for a term of years (not in excess of 20 years) or for the life or lives of such individual or individuals; (B) from which no amount other than the payments described in § 664(d)(2)(A) and other than qualified gratuitous transfers described in § 664(d)(2)(C) may be paid to or for the use of any person other than an organization described in § 170(c); (C) following the termination of the payments described in § 664(d)(2)(A), the remainder interest in the trust is to be transferred to, or for the use of, an organization described in § 170(c) or is to be retained by the trust for such a use; and (D) with respect to each contribution of property to the trust, the value (determined under § 7520) of such remainder interest in such property is at least 10 percent of the net fair market value of such property as of the date such property is contributed to the trust.

Section 664(d)(3) provides that notwithstanding the provisions of § 664(d)(2)(A) and (B), the trust instrument may provide that the trustee shall pay the income beneficiary for any year -- (A) the amount of the trust income, if such amount is less than the amount required to be distributed under § 664(d)(2)(A), and (B) any amount of the trust income which is in excess of the amount required to be distributed under § 664(d)(2)(A), to the extent that (by reason of § 664(d)(3)(A)) the aggregate of the amounts paid in prior years was less than the aggregate of such required amounts.

Section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2055(a) provides that, for purposes of the federal estate tax, the value of the taxable estate shall be determined by deducting from the value of the gross estate the amount of all bequests, legacies, devises, and transfers to or for the use of religious, charitable, scientific, literary, or educational organizations described in §§ 2055(a)(1) through 2055(a)(4).

Section 2055(e)(2) provides that where an interest in property (other than an interest described in § 170(f)(3)(B)) passes or has passed from the decedent to a person, or for a use, described in § 2055(a), and an interest (other than an interest which is extinguished upon the decedent's death) in the same property passes or has passed (for less than an adequate and full consideration in money or money's worth) from the decedent to a person, or for a use, not described in § 2055(a), no deduction shall be allowed under § 2055 for the interest that passes or has passed to the person, or for a use, described in § 2055(a), unless -- (A) in the case of a remainder interest, such interest is in a trust which is a charitable remainder annuity trust or a charitable remainder unitrust (described in § 664) or a pooled income fund (described in § 642(c)(5)), or (B) in the case of any other interest other than a remainder interest, such interest is in the form of a guaranteed annuity, or is a fixed percentage distributed yearly of the fair market value of the property (to be determined yearly).

Section 2055(e)(3) provides for the reformation of interests to comply with the requirements of § 2055(e)(2). Section 2055(e)(3)(A) provides that a deduction shall be allowed under § 2055(a) in respect of any qualified reformation.

Section 2055(e)(3)(B) defines the term "qualified reformation" to mean a change of a governing instrument by reformation, amendment, construction, or otherwise that changes a "reformable interest" into a "qualified interest", but only if --

- (i) any difference between (I) the actuarial value (determined as of the date of the decedent's death) of the qualified interest, and (II) the actuarial value (as so determined) of the reformable interest does not exceed 5 percent of the actuarial value (as so determined) of the reformable interest;

- (ii) in the case of (I) a charitable remainder interest, the nonremainder interest (before and after the qualified reformation) terminated at the same time, or (II) any other interest, the reformable interest and the qualified interest are for the same period; and

- (iii) the change is effective as of the date of the decedent's death.

Section 2055(e)(3)(C)(i) defines the term "reformable interest" to mean any interest for which a deduction would be allowable under § 2055(a) at the time of the decedent's death but for § 2055(e)(2).

Section 2055(e)(3)(C)(ii) provides that the term "reformable interest" does not include any interest unless, before the remainder vests in possession, all payments to persons other than an organization described in § 2055(a) are expressed either in specified dollar amounts or a fixed percentage of the fair market value of the property.

Section 2055(e)(3)(C)(iii) provides, in part, that § 2055(e)(3)(C)(ii) does not apply to any interest if not later than 90 days after the last date (including extensions) for filing an estate tax return, if an estate tax return is required to be filed, a judicial proceeding is commenced to change the interest into a qualified interest.

Section 2055(e)(3)(D) defines the term "qualified interest" to mean an interest for which a deduction is allowable under § 2055(a).

In this case, the charitable remainder interest constitutes a reformable interest under § 2055(e)(3)(C)(i) because as originally drafted, Trust provides for a charitable remainder interest that is presently ascertainable and, hence, severable from the noncharitable interests. Prior to the enactment of § 2055(e)(2), such interests would have been deductible under § 2055(a). See § 20.2055-2(a) of the Estate Tax Regulations. Although the payments to Sister and Brother were not expressed in specified dollar amounts or a fixed percentage of the fair market value of the property as required by § 2055(e)(3)(C)(ii), a judicial proceeding was commenced, as provided under § 2055(e)(3)(C)(iii), before the 90th day after the last date (including extensions) for filing Decedent's estate tax return.

Further, the reformation satisfies the requirements of § 2055(e)(3)(B)(i), (ii) and (iii) because: (1) the difference between the actuarial value (determined as of the date of the Decedent's death) of the qualified interest and the actuarial value (as so determined) of the reformable interest does not exceed 5 percent of the actuarial value (as so determined) of the reformable interest; (2) the nonremainder interest terminates at the same time both before and after the reformation; and (3) the reformation is effective as of the date of Decedent's death.

Accordingly, based on the information submitted and representations made, we conclude that the reformation of Trust, as described above, will be a qualified reformation within the meaning of § 2055(e)(3), provided the reformation is effective under local law, and provided the trust as reformed meets the requirements for a charitable remainder unitrust under § 664(d)(2) and (3) and the applicable regulations. An estate tax charitable deduction will be allowable under § 2055(a) for the present value of the charitable remainder interests in reformed Trust, determined under § 20.2055-2(f)(2)(ii). However, we are specifically not ruling on whether Trust as

reformed satisfies the requirements of § 664(d)(2) and (3) and the regulations thereunder. See Rev. Proc. 2008-3 2008-1 I.R.B. 110, section 4.01(36).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

George L. Masnik  
Chief, Branch 4  
(Passthroughs & Special Industries)

Enclosure (2)  
Copy for § 6110 purposes  
Copy of this letter